

ARKANSAS SUPREME COURT

No. CR 06-954

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered October 26, 2006

VERNON ROBINSON
a/k/a Vernon Robinson/
Muhammad
Appellant

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE APPELLANT’S
BRIEF AND PETITION FOR WRIT OF
CERTIORARI [CIRCUIT COURT OF
ASHLEY COUNTY, CR 83-56, HON.
DON GLOVER, JUDGE]

v.

STATE OF ARKANSAS
Appellee

APPEAL DISMISSED; MOTION AND
PETITION MOOT

PER CURIAM

In 1983, Alice Mosley, an elderly woman in Wilmot, Arkansas, was raped and beaten to death in the course of a burglary. Vernon Robinson, who is also known as Vernon Robinson/Muhammad, and his brother Carl, neighbors of the victim, were jointly charged with capital felony murder. Both men, who were represented by different attorneys, pleaded guilty to the offense but each claimed that the other had committed the rape and murder while he acted as an accomplice. Both were sentenced to life imprisonment without the possibility of parole.

Appellant Vernon Robinson timely filed in the trial court a petition for postconviction relief pursuant to Criminal Procedure Rule 37.1 seeking to vacate the judgment, which was denied. We affirmed, noting that Vernon had admitted at the plea hearing that he cut the telephone wires to the victim’s house and “watched out” as Carl committed the crime and that Vernon’s fingerprints were

found on a can of Lysol which was likely used to bludgeon the victim.¹ *Robinson v. State*, 294 Ark. 97, 740 S.W.2d 918 (1987). When two persons assist one another in the commission of a crime, each is an accomplice of the other and criminally liable for the conduct of both. *Cook v. State*, 350 Ark.398, 86 S.W.3d 916 (2002).

In 2004, appellant filed a *pro se* petition for writ of *habeas corpus* in the trial court seeking relief pursuant to Act 1780 of the 2001 Acts of Arkansas, Ark. Code Ann. §§ 16-112-201 – 16-112-207 (Supp. 2003). The trial court denied relief, and appellant has lodged an appeal of that order in this court. Now before us are appellant's *pro se* motion for extension of time to file his brief and petition for writ of *certiorari*.

We need not address the merits of appellant's motion and petition as it is clear on the record before us that he cannot prevail on appeal. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

A petitioner seeking testing under Act 1780 must first present a *prima facie* case that identity was an issue at trial. Section 16-112-202(b)(1). When a defendant enters a plea of guilty, the guilty plea is the trial. *Cox v. State*, 299 Ark. 312, 772 S.W.2d 336 (1989); *Crockett v. State*, 282 Ark. 582, 669 S.W.2d 896 (1984); *Irons v. State*, 267 Ark. 469, 591 S.W.2d 650 (1980). In entering his plea

¹Carl Robinson also filed a Rule 37.1 petition that was denied. This court affirmed the order. *Robinson v. State*, 296 Ark. 86, 752 S.W.2d 34 (1988).

of guilty, appellant admitted that he committed the offense. His identity was thus not in question. We held in *Graham v. State*, 358 Ark. 296, 188 S.W.3d 893 (2004) (*per curiam*) that an appellant's admission of guilt settles all question as to whether identity was an issue.

Appellant contended in the *habeas* petition that he was actually innocent of rape but conceded that he was "more than likely" guilty of a lesser offense. Incongruously, he also argued that scientific testing of serological evidence would establish that a person of another race than his own committed the murder and rape. He attempted to circumvent the fact that he pleaded guilty by arguing that his attorney and the prosecuting attorney conspired to keep him from knowing of the exculpatory evidence, but he presented no substantiation for the claim. As appellant did not present a *prima facie* case that identity was an issue, the trial court did not err in denying the petition.

Appeal dismissed; motion and petition moot.